



June 26, 2000

Mr. Charles M. Allen, II  
Legal Office  
Richardson Police Department  
P.O. Box 831078  
Richardson, Texas 75083-1078

OR2000-2429

Dear Mr. Allen:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code (the "Act"). Your request was assigned ID# 136452.

The Richardson Police Department (the "department") received two requests for information from the same individual, requesting information relating to his arrest for aggravated assault. You have submitted the responsive records for our review. You assert that the Act does not require the department to comply with a request for information submitted by an individual who is confined in a correctional facility. You also claim that the requested information is excepted from disclosure under section 552.108 of the Act. We have considered your arguments and have reviewed the information you submitted.<sup>1</sup>

Section 552.028 of the Act provides in relevant part:

(a) A governmental body is not required to accept or comply with a request for information from:

(1) an individual who is imprisoned or confined in a correctional facility[.]

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<sup>1</sup>Your letter to the requestor dated May 4, 2000, acknowledging the second request for information, indicates that you interpret it as seeking the same information as the first request. You asked the requestor to submit further information if he disagreed. You have not advised this office of the receipt of any further correspondence from the requestor, and this office has received none. Therefore, we accept your interpretation of these requests for information and address the responsive information and your arguments accordingly.

(b) This section does not prohibit a governmental body from disclosing to an individual described by Subsection (a)(1) . . . information held by the governmental body pertaining to that individual.

Gov't Code § 552.028(a)(1), (b). You inform us, and the requests for information confirm, that the requestor is an inmate in a federal correctional facility. Therefore, section 552.028(a) permits the department to decline to comply with these requests for information.<sup>2</sup> However, as the department also has discretion under section 552.028(b) to release information pertaining to the requestor, we will address your claim that the submitted records are excepted from disclosure under section 552.108.

Initially we note that the submitted records include documents that appear to have been filed with a court. In the event that the department elects to comply with these requests for information, all information that also is contained in a public court record must be released to the requestor. *See* Gov't Code § 552.022(a)(17); *see also Star-Telegram, Inc v. Walker*, 834 S.W.2d 54 (Tex. 1992).

Section 552.108, the "law enforcement" exception, provides in relevant part that "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Gov't Code § 552.108(a)(2). A governmental body that claims an exception to disclosure under section 552.108 must sufficiently explain, if the responsive information does not do so on its face, how and why section 552.108 is applicable. *See Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). Section 552.108(a)(2) protects law enforcement records that pertain to a concluded criminal investigation or prosecution that did not result in a conviction or a deferred adjudication. In this instance, you inform us that the requested records relate to an arrest that did not result in conviction or adjudication. Based on your representation and our review of the submitted records, we conclude that, except for responsive information that is subject to required disclosure under section 552.022(a)(17) of the Act, most of the information in the submitted records is excepted from disclosure under section 552.108(a)(2). *See* Open Records Decision No. 216 (1978) (addressing applicability of statutory predecessor to closed cases).

We note, however, that section 552.108 does not except from disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Section 552.108(c) refers to the basic front-page offense and arrest report information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177

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<sup>2</sup>Section 552.028(c) provides that "[i]n this section, 'correctional facility' has the meaning assigned by Section 1.07(a), Penal Code." Gov't Code § 552.028(c). Under section 1.07(a) of the Penal Code, a federal facility is within the ambit of "correctional facility." *See* Penal Code § 1.07(a)(14), (30).

(Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Therefore, if the department elects to comply with these requests for information, it also must release basic front-page information, including a detailed description of the offense, even if that information does not literally appear on the front page of the corresponding police report. See Gov't Code § 552.108(c); *Houston Chronicle*, 531 S.W.2d at 186-87; Open Records Decision No. 127 at 3-4 (1976) (summarizing the types of information deemed public by *Houston Chronicle*).

In summary, the department may decline to comply with these requests for information pursuant to section 552.028(a) of the Government Code. If the department elects to release information to the requestor under section 552.028(b), it must release any responsive information that is a matter of public court record under section 552.022(a)(17) and basic information about the requestor's arrest under section 552.108(c). The rest of the submitted information is excepted from disclosure under section 552.108(a)(2).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

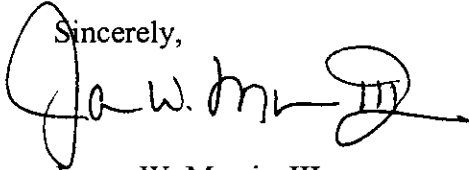
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JMW/ljp

Ref: ID# 136452

Encl. Submitted documents

cc: Mr. Billy Perkins #11558-026  
Mesa/Bravo Unit  
Federal Correction Institution  
P.O. Box 6000  
Florence, Colorado 81226-6000  
(w/o enclosures)